

EDMUND G. BROWN JR., Attorney General
of the State of California
JOSE R. GUERRERO, State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480

Attorneys for Complainant

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

Case No. S-382

KERI LYNN ZELLMER
1323 E. 21st Street
Hays, Kansas 67601

STATEMENT OF ISSUES

Respiratory Care Practitioner

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about August 14, 2006, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner license from Keri Lynn Zellmer (Applicant/Respondent). On or about June 30, 2006, Keri Lynn Zellmer certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 23, 2007. On April 16, 2007, the Board received a letter from Applicant requesting a hearing.

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4

5
6
7

8
9

10

11
12
13

14
15
16

17
18
19
20
21

22
23
24

25
26
27

28

1 7. Section 3732 of the Code states:

2 "(a) The board shall investigate an applicant for a license, before a license is
3 issued, in order to determine whether or not the applicant has the qualifications required
4 by this chapter.

5 "(b) The board may deny an application, or may order the issuance of a
6 license with terms and conditions, for any of the causes specified in this chapter for
7 suspension or revocation of a license, including, but not limited to, those causes
8 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

9 8. Section 3750.5 of the Code states:

10 "In addition to any other grounds specified in this chapter, the board may
11 deny, suspend, or revoke the license of any applicant or license holder who has done any
12 of the following:

13 "(a) Obtained or possessed in violation of law, or except as directed by a
14 licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or
15 furnished or administered to another, any controlled substances as defined in Division 10
16 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug
17 as defined in Article 2 (commencing with section 4015) of Chapter 9.

18 "(d) Been convicted of a criminal offense involving the consumption or
19 self-administration of any of the substances described in subdivisions (a) and (b), or the
20 possession of, or falsification of a record pertaining to, the substances described in
21 subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

22 9. Section 3752 of the Code states:

23 "A plea or verdict of guilty or a conviction following a plea of nolo
24 contendere made to a charge of any offense which substantially relates to the
25 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
26 a conviction within the meaning of this article. The board shall order the license
27 suspended or revoked, or may decline to issue a license, when the time for appeal
28 has elapsed, or the judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of sentence,
2 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
3 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
4 setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment."

6 10. California Code of Regulations, title 16, section 1399.370, states:

7 "For the purposes of denial, suspension, or revocation of a license, a crime
8 or act shall be considered to be substantially related to the qualifications, functions
9 or duties of a respiratory care practitioner, if it evidences present or potential
10 unfitness of a licensee to perform the functions authorized by his or her license or
11 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
12 acts shall include but not be limited to those involving the following:

13 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
14 abetting the violation of or conspiring to violate any provision or term of the Act.

15 COST RECOVERY

16 11. Section 3753.5, subdivision (a) of the Code states:

17 "In any order issued in resolution of a disciplinary proceeding before the
18 board, the board or the administrative law judge may direct any practitioner or applicant
19 found to have committed a violation or violations of law to pay to the board a sum not to
20 exceed the costs of the investigation and prosecution of the case."

21 12. Section 3753.7 of the Code states:

22 "For purposes of the Respiratory Care Practice Act, costs of prosecution
23 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
24 other administrative, filing, and service fees."

25 13. Section 3753.1 of the Code states:

26 "(a) An administrative disciplinary decision imposing terms of probation
27 may include, among other things, a requirement that the licensee-probationer pay the
28 monetary costs associated with monitoring the probation. "

1 FIRST CAUSE FOR DENIAL OF LICENSE

2 (Possession of a controlled substance; Conviction of a substantially-related crime)

3 14. Respondent 's license application is subject to denial under sections
4 3750(d) and 3752, 3750.5(d) [conviction], 3750.5(a) [possession of a controlled
5 substance] and 3750(g) in that she was convicted of one count of felony possession of
6 marijuana. The circumstances are as follows:

7 A. On or about February 13, 2001, respondent was charged with a
8 violation of Kansas Code section 65-4162(a)(3), felony possession of marijuana, a level 4
9 felony.

10 B. On or about June 18, 2001, respondent was convicted of one count
11 of felony possession of marijuana, a level 4 felony.

12 C. On or about July 8, 2005, an Order for Expungement was entered
13 in the District Court of Ellis County, State of Kansas.

14 15. Therefore, respondent's application is subject to denial pursuant to
15 code sections 3750(d), 3752 [conviction], 3750(g), 3750.5(a), and 3750.5(d) in that she
16 was in possession of a controlled substance, and she was convicted of felony possession of
17 marijuana, which is substantially related to the practice of respiratory care.

18 SECOND CAUSE FOR DENIAL OF LICENSE

19 (Dishonest Acts)

20 16. Paragraph 14A - 14C above are incorporated herein.

21 17. Respondent's license application is subject to denial under code
22 section 3750(j) [dishonest acts] in that she did not truthfully answer questions on the
23 application for licensure.

24 A. Question 19 of the application states "Have you ever been arrested,
25 charged or convicted or had a conviction expunged, dismissed, reduced or diverted by the
26 court? (Any conviction which has been dismissed or reduced pursuant to California Penal
27 Code section 1203.4 MUST BE DISCLOSED!) " Respondent checked the line next to
28 "No" and signed the application under penalty of perjury. However, at the time she

1 completed the application she was aware that on July 8, 2005, her June 18, 2001
2 conviction of one count of felony possession of marijuana was expunged and she
3 knowingly did not report it.

4 B. Question 22 of the application states, "Has any disciplinary action
5 ever been taken by any federal, state or other governmental agency or other country against
6 any professional or vocational registration, certificate or license you now hold or have held
7 in the past?" Respondent checked the line next to "No". However, at the time she
8 completed the application she was aware that on December 8, 2003, she had entered into a
9 Consent Order with the State of Kansas for a one year probationary license to practice
10 respiratory therapy, based on her 2001 conviction, and she knowingly did not report this in
11 response to question 22.

12 18. Therefore, respondent's application for licensure is subject to
13 denial based on her dishonest acts in violation of code section 3750(j) in knowingly failing
14 to reveal the 2005 expungement of her 2001 felony conviction, and knowingly failing to
15 reveal the disciplinary action taken against her Kansas license to practice as a respiratory
16 therapist.

17 THIRD CAUSE FOR DENIAL OF LICENSE

18 (Out of State Discipline)

19 19. Paragraphs 14 - 18 above are incorporated herein.

20 20. Respondent's license application is subject to denial under code
21 section 3750(m) [out of state discipline] in that on December 8, 2003, she entered into a
22 Consent Order with the State of Kansas for a one year probationary license to practice
23 respiratory therapy, based on her 2001 conviction of felony possession of marijuana.

24 PRAYER

25 WHEREFORE, Complainant requests that a hearing be held on the matters
26 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

27 1. Denying the application of Keri Lynn Zellmer for a Respiratory
28 Care Practitioner;

1 2. Directing Keri Lynn Zellmer to pay the Respiratory Care Board of
2 California the costs of the investigation and enforcement of this case, and if placed on
3 probation, the costs of probation monitoring;

4 3. Taking such other and further action as deemed necessary and
5 proper.

6 DATED: JUNE 5, 2007

7
8 

9 STEPHANIE NUNEZ
10 Executive Officer
11 Respiratory Care Board of California
12 Department of Consumer Affairs
13 State of California
14 Complainant

13 SF2007401106

14 zellmer.k.soi.revised.wpd